

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROGER L. ALTIS)	
Claimant)	
)	
VS.)	
)	
VIKING INDUSTRIES, INC.)	
Respondent)	Docket No. 1,015,743
)	
AND)	
)	
LIBERTY MUTUAL INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) request review of the March 8, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

ISSUES

The ALJ ordered respondent to continue to provide medical treatment through Dr. Douglas Burton.

The respondent requests review of this decision alleging that claimant's present need for medical treatment to his cervical area is not causally related to his accident.

Claimant has filed no brief but presumably would argue that the ALJ's preliminary hearing Order should be affirmed.

The only issue to decide is whether claimant's need for treatment is causally related to his August 30, 2003 work-related accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

On August 30, 2003, claimant sustained a compensable injury when he fell through a stairway twisting backwards and landing on his right shoulder and neck.¹ Claimant's complaints initially were to his low back but that since the accident, he has also experienced upper back, neck and right arm symptoms that have gotten progressively worse over time.²

On September 2, 2004, a preliminary hearing was held at which claimant requested additional treatment with Dr. Douglas Burton who has diagnosed, among other things, C7 radiculopathy. The ALJ granted that request and claimant has continued his care with Dr. Burton.

Now, Dr. Burton has apparently recommended that claimant undergo a fusion to his cervical spine. Respondent contends it should not be responsible for this procedure as "claimant has yet to produce an explanation for an alleged injury to his cervical area."³ Respondent also maintains Dr. Paul Stein has cautioned claimant against having surgery as there is insufficient evidence to show nerve root compression. Thus, respondent believes the surgery claimant seeks is unwarranted and should not be provided.

Following a preliminary hearing, at which no testimony was provided and only medical records were entered into evidence, the ALJ again designated Dr. Burton as the treating physician and specifically designated the proposed surgery as "authorized".⁴ The Board has considered respondent's arguments and finds the ALJ's preliminary hearing Order should be affirmed.

Claimant's uncontroverted recitation of his accident and subsequent injury show that he injured his neck in his fall on August 30, 2003. While his lower back complaints were his prevailing problem initially, he told Dr. Stein, the physician selected by the respondent to weigh in on the causation aspects of his neck complaints, that over time he began to note problems with his upper back, neck and shoulder. This statement alone refutes respondent's contention that there is no explanation for claimant's neck complaints. Moreover, although he indicates he does not believe claimant's neck complaints are ultimately related to his accident, Dr. Stein did indicate that the mechanism of claimant's injury is consistent with a possible neck injury.⁵

¹ P.H. Trans. (Sept. 2, 2004), Cl. Ex. 1 at 3 (Dr. Burton's June 17, 2004 office note).

² *Id.* (Mar. 8, 2005), Resp. Ex. 1 at 2 (Dr. Stein's Jan. 13, 2005 report at 1).

³ Respondent's Brief at 4 (filed Apr. 11, 2005).

⁴ ALJ Order (Mar. 8, 2005).

⁵ P.H. Trans. (Mar. 8, 2005), Resp. Ex. 1 at 5 (Dr. Stein's Jan. 13, 2005 report at 4).

In ordering respondent to continue providing authorized treatment through Dr. Burton, the ALJ concluded that claimant's need for treatment was causally related to his August 30, 2003 accident. He was apparently more persuaded by claimant's recitation of the accident and the mechanism of injury over that offered by Dr. Stein. The Board finds no reason to disturb the ALJ's conclusion and affirms the ALJ's preliminary hearing Order in all respects.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated March 8, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July, 2005.

BOARD MEMBER

c: Andrew E. Busch, Attorney for Claimant
Samantha Benjamin, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director